UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BEFORE THE HONORABLE PEGGY A. LEEN, MAGISTRATE JUDGE

ORACLE USA, INC., a Colorado corporation; ORACLE AMERICA, INC., a Delaware corporation; and ORACLE INTERNATIONAL CORPORATION, a California corporation, Plaintiffs, vs. RIMINI STREET, INC., a Nevada corporation; and SETH RAVIN, an individual, Defendants.	No. 2:10-cv-0106-LRH-PAL

TRANSCRIPT OF STATUS CONFERENCE

November 8, 2011

Las Vegas, Nevada

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LAS VEGAS, NEVADA, NOVEMBER 8, 2011, 9:00 A.M.

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P R O C E E D I N G S

COURTROOM ADMINISTRATOR: All rise.

THE COURT: Good morning. Please be seated.

COURTROOM ADMINISTRATOR: Your Honor, we are now calling the status conference in the matter of Oracle, USA, Inc., versus Rimini Street, Inc. The case number is 2:10-cv-0106-LRH-PAL.

Beginning with plaintiff's counsel, counsel, please state your names for the record.

MR. RINGGENBERG: Kiernan Ringgenberg, Boies, Schiller & Flexner, for the plaintiffs.

MR. HOWARD: Jeff Howard, from Bingham, McCutchen, for the plaintiffs.

MR. POCKER: Richard Pocker, Boies, Schiller & Flexner, for the plaintiff.

MR. RECKERS: Rob Reckers, Shook, Hardy & Bacon, for the defendants.

MR. ALLEN: And West Allen, from Lewis & Roca, for the defendants.

THE COURT: This is the time set for the status hearing. I have read all of your voluminous material supporting your joint case management report in this

matter.

As a housekeeping matter, two things. Counsel, I remind you, please, if you're going to file something that's over 50 pages, provide a courtesy copy to chambers so that I can have a prayer of reading everything before the hearing in the matter. My eyes are too old frankly to read that many pages online. And I have access to it and so forth, but if you will please do that. And that saves my staff from being tied up making copies for me.

Second, if you will consult our newly amended local rules on filing matters under seal, there is a specific provision -- rather than giving me courtesy copies with omitting the sealed documents or not filing the sealed documents, the local rule permits you to file documents under seal contemporaneously with a motion requesting that the matter be kept under seal.

So unless you have the most extraordinary document that you have a fear will be exposed if I don't grant your motion, in which case don't rely on it, just go ahead and file them contemporaneously with the motion to seal so that it doesn't require duplicate filings and so forth.

All right. With that, by way of minor housekeeping issue aside, let me take up the four discovery disputes that are listed.

And I did see that an emergency motion for protective order was filed, which I'm not going to address today, but I'll talk to you about a briefing schedule and how much of an expedited basis a decision is needed.

So let me hear first from Oracle concerning its request to compel an amended response to Interrogatories No. 20 and 25.

MR. RINGGENBERG: Thank you, Your Honor. The relevance of the material requested by Interrogatories 24 and 25 is not disputed. It goes straight to one of Rimini's central defenses.

The problem with the response is this. There's a very short substance free narrative response, has a list of folders with very generic and unspecific descriptions about what was done with them. Let me just read you an example.

One folder, quote, has materials relating to PeopleSoft software that may have been used in building environments for a particular client.

That is the substance. That is not an answer to the interrogatory. Certainly it's not a nonevasive complete answer, which is what the rules require.

The substance of Rimini's response is contained in a list of 1,200 documents, most of which are e-mails and electronic -- instant messages, which are, in many cases,

entirely irrelevant. I don't know how the list was compiled, but, you know, we've attached some examples of ones that really have nothing to do with the question.

There are some on the list that are clear enough. There are some that are ambiguous. But even the ones that are clear enough, Rimini Street's witnesses have disputed exactly what the e-mails say and mean.

So there's an example. Attached as Exhibit I to Mr. Howard's declaration is an e-mail in which Rimini employees asked, "Please copy the following Oracle CDs to this specific location."

He replies, "I have done what you asked. I have copied it to the specified location."

But when confronted in his deposition, he refused to admit that that's what he did. And he said, "Well, for all I know, I could have had a separate conversation, maybe my e-mail's referring to a different copy or a different location" --

THE COURT: "I don't remember." I know what the e-mail says.

MR. RINGGENBERG: Right. And I want to distinguish between him saying "I don't remember that situation so I can't tell you anything," that might be a fair enough answer, but he did more than that. He attempted to undermine the point that the e-mail actually

did say by disputing, well, saying, "Look, for all I know, there were other conversations that show that this e-mail doesn't really mean what it seems to mean."

And if witnesses are going to do that, then it entirely undermines the point of referring to documents in this way. If you had --

THE COURT: You want --

MR. RINGGENBERG: -- (inaudible) to business records --

THE COURT: -- an interrogatory response that binds the defendant to what their position is on this issue?

MR. RINGGENBERG: That's exactly right, Your Honor. We're entitled to know what the facts are, or at least what they say the facts are -- and if -- we probably will disagree with what they say, but at least we know what their position is and we can dispute it at trial -- as opposed to affording them the flexibility to stand up at trial and say, "Well, yes, that's what the document is, but that's not really what it means, our interrogatory answer really meant something different." And that's the kind of dispute we're trying to avoid.

And I will say, the vast majority of e-mails are either irrelevant or, frankly, difficult to discern. And that's another reason why the answer can't be provided.

I want to make one other point, which is there's a bit of a side show in the papers about the deletion of these materials that -- they were -- there's no dispute that they were deleted shortly before this lawsuit was filed. We do believe that that was a violation of their duty to preserve evidence. But that's not the issue we're presenting.

What we want now is an answer to the interrogatory. We do intend to file, at an appropriate time, request for relief for what we regard as spoliation; and our understanding is the right procedure is to follow that with the district court at the in fact discovery absent further direction from the Court.

So I don't want to get sidetracked with that issue now, although Rimini has addressed it in the papers.

THE COURT: Thank you.

Let me hear the opposing view. Mr. Reckers.

MR. RECKERS: Yes. Your Honor, from Rimini's perspective, we've given them everything we have to these particular questions.

We've interviewed the witnesses. We have compiled the brief narrative to provide a high-level summary in a folder-by-folder basis. We've also identified the specific and regularly kept business records of those requests. We've listed them separately in our response.

But we also went and we searched a larger database of responsive information for these e-mail -- primarily e-mails, this list of 1,200 -- 1,200 documents. And it was compiled through targeted searches to yield the relevant results.

Let me tell you why we had to go through e-mails. What they've asked for is every instance -- every type of software that is in these folders -- Oracle software in these folders over a long period of time and how they were used, specific uses of that content over time.

It's not something that individuals are actually going to remember. I'll show you some examples in the documents that Oracle puts forward in their declaration. But this is the only source of the information. It's not that the witnesses are going to be able to tell us, oh, yeah, in 2009, I copied this folder to this location or this particular client.

So we did the targeted searches. They've asked for a lot of information, and we have a lot of documents. It's the same database that we produced 6 million pages from, for example. So it's a huge database.

We culled it down as narrowly as we could to provide them all the responsive information that we have.

Mr. Ringgenberg says that the vast majority of

them are irrelevant and don't actually answer the question. I'll dispute that. Each of these documents --

THE COURT: Well, that's the rut. If both sides are reviewing the same materials in good faith, they have a point that you are in superior position to understand your own documents. Not you personally, obviously, but you and your client are in a superior position to understand what your documents say and what they mean.

MR. RECKERS: Absolutely, Your Honor. And if I would point the Court's attention to Exhibit 9 to Mr. Howard's declaration, which is the first -- which is the first e-mail they cite as one of the list of irrelevant documents, on the very first page of that thread -- again, this is the example that Oracle gives, is there's a -- it says, and this is the first substantive line in the -- it's the second to last page of the exhibit. It's designated with Bates number RSI04223171.

It says: I have to install Oracle 10G -- sorry. I have to install Oracle 10G for Experian VM, and I understand that it's located at a particular file location.

Oracle 10G is database software that's at issue in this case. Experian is a Rimini client. It references the software for it.

This is Oracle's first example. It says Oracle 10G software; it identifies the client, Experian; it

identifies the location. There's nothing ambiguous about what's in this particular e-mail.

The other e-mails they cite in the list -- in their -- the following exhibits, E, F, and G, are all talking about the same file storage, and their beef with those e-mails is that they talk about nonOracle software. They are not.

Some of our responses talked about other software, nonOracle branded software. But I don't think that comprises the whole set. We made a good faith basis to identify what software was in those files. Yes, some of it might be for other software vendors. But what we attempted to do through our targeted searches, to find clear examples of what happened.

Another example, the one we just talked about on Exhibit I with the -- the Corpuz e-mail that was discussed at his deposition. He said he didn't know.

And they asked him, they said, "Well, can you give any other explanation as to, you know, what you could have meant when you said they loaded to the specific location?"

And he did. He tried to provide some other examples. But only when prompted.

THE COURT: And you understand opposing counsel's issue here? They want to make sure that your

interrogatory answer represents the knowledge of the corporation, that you're bound by it, and that you're not providing an answer and then having your people back off of that, when they are testifying at deposition. And you read the Corpuz deposition differently than your opposing counsel.

MR. RECKERS: Yes.

THE COURT: You read it as saying, "I don't know"; and then he was asked to say, "Well, give me possible other explanations for how this could have happened?"

MR. RECKERS: Yes. And, again, I think he was trying to answer that question honestly. But the gist is that he doesn't know -- and that's why we have interrogatories, so we, as the counsel, can pull it out, look at it, and say we are not going to dispute the contents here. Mr. Corpuz didn't deny that he did this. He was asked for other explanations when he said, "I don't know."

He doesn't know. And that's the fact of the matter. And, of course, this is a particular event that happened in early 2009. How is he going to remember it? How is he going to know? How would he say anything other than "I don't know"? Or --

THE COURT: It depends on how significant of an

issue it is.

MR. RECKERS: And that's certainly true. But this is -- this is something where the record is clear this is what happened. And we're not going to dispute it. And that's why we put it on our list, interrogatory response.

And they're -- and, you know, that's how, you know, this type of discovery vehicle works. They're free to rely on it, that this is what happened. This represents a use of this software in a way that's reflected by the document that we've listed.

THE COURT: Was Ms. Williams deposed in her individual capacity or as the corporation's Rule 30(b)(6) designee?

MR. RECKERS: In her individual capacity.

THE COURT: And do you intend -- your response to their request for an order compelling them an answer says you intend to supplement the interrogatory responses with her testimony.

MR. RECKERS: Yes.

THE COURT: And you say you intend to be bound by what she has testified about.

MR. RECKERS: Yes.

THE COURT: Is there anyone in the corporation who has superior knowledge to Ms. Williams about this issue?

MR. RECKERS: No. And so that's -- and that's one of the reasons we put it in our briefing, and the deposition's transcript just went final.

So I think that with her testimony -- she was deposed obviously on this important issue at some length --

THE COURT: Are you telling me that this is the best answer that your corporation can provide because she is the most knowledgeable person and she has what level of detail the corporation has?

MR. RECKERS: Absolutely. Yes.

THE COURT: And you're bound by that?

MR. RECKERS: Yes, Your Honor.

THE COURT: And you're not going to claim that she's incorrect?

MR. RECKERS: If we put -- we're going to have to put the citations down and we're going to review the citations and put the ones down that the corporation will be bound by.

And as I stand here today, my general understanding is that she's correct and that is the corporation's answers to these questions.

THE COURT: And how soon are you going to be in a position to supplement your response with her testimony that's now the corporation's answer?

MR. RECKERS: We can do some (indiscernible).

THE COURT: Okay. Thank you.

Oracle's motion to compel amended responses to Interrogatories No. 24 and 25 is granted to the extent that Rimini shall supplement Answer to Interrogatory No. 24 and 25 with the information provided with Ms. Williams, clarifying that it is the corporation's response, and within 14 days of today's date, and denied in all other respects.

I'll hear from you on your motion to compel read only access to Rimini's SharePoint Internet.

MR. HOWARD: Thank you, Your Honor. Jeff Howard.

With respect to the SharePoint materials, I don't think there's any dispute that they are relevant. They were not disclosed as a source of information. We found them by asking questions in deposition and then by finding a remnant of a file in a personal virtual machine from one of our witnesses that was the menu for the SharePoint system.

And it was revelatory because what it shows is links between the different materials that are on there that are the specific materials that are central to the case, the software copies that they have, the way that they label those, the way that they bring them up.

Exhibit R to my -- to the Howard declaration is

that -- one of the exhibits that we used in that deposition, it was Mr. Conley's deposition.

So there is an important category of information that you can only have, and our experts can only have, by seeing the interrelationship that is revealed through the dynamic system that is SharePoint, how it's used, how they're brought up, how they're labeled, what they mean. That's how they use the software.

What we do have as a result violates Rule 34, both because it doesn't reveal those characteristics of the data as they exist in the ordinary --

THE COURT: You reached an agreement at the beginning of this case about what you were going to do and if what you got in response to electronic request for data was inadequate. And you have a procedure in place, and you've been operating under that procedure in place, to request native information through files in which you agreed the TIFF version of it is inadequate for purposes.

So how are they violating any rule when you reached an agreement about "we're going to do it this way at first, and then if you need something else, let us know, and we'll -- we'll talk about it and provide it if we think that's reasonable"?

MR. HOWARD: Yeah. And I think -- I think that is all right and true as far as it goes. And it applies,

and the parties have been operating under that quite well with respect to individual documents, say that -- a PowerPoint or an Excel file which is produced.

It's produced in a TIFF, you can't, you know, see the dynamic character of it; you ask for it in native, the parties change those in native.

THE COURT: But most of the time you don't need it --

MR. HOWARD: We don't --

THE COURT: -- but sometimes you do.

MR. HOWARD: Exactly. And when we do, we ask for it, and they give it to us.

The difference here is that this is more in the nature of a database. And so it isn't possible to simply produce the native, you know, in quotes. That -- that --

THE COURT: They represent to you that they have gone through this database and searched it for responsive documents and produced all documents that they believe are responsive to your discovery requests. And in every discovery case you have to rely on -- I mean, you signed these discovery responses under penalty of Rule 26(g), and you have to rely on people doing what they said they did.

You have a reason to believe that they have not adequately searched the SharePoint database to produce responsive documents.

MR. HOWARD: Yes, Your Honor. And maybe it's me misunderstanding what they're saying. But we have not heard them say, and I don't see in their papers that they say, that they have comprehensively searched SharePoint for all relevant and responsive materials as a source of information which should have been disclosed.

I asked Mr. Conley at his deposition, "How do I find the information behind this link? Is there" -- and he said, "The only way to do that is to go into SharePoint."

And I can tell you that for categories of those links, either we don't have them, which in some cases is true, that we do not have them, or we can't tell how what we have relates to the groupings that are in SharePoint.

Let me give you one example of that from Mr. Grigsby's deposition.

I asked him, "Where are the documents that are in the JDE library?"

There's a library that he testified about, that was the JDE library.

He said, "Well, they're in SharePoint."

I said, "Well, what are they? Can you identify them?"

"No, I'd have to look in SharePoint."

We asked, technically, opposing counsel --

THE COURT: Can you remember the content of your

own office files and your own office directory?

MR. HOWARD: Well, no. It was a perfectly appropriate answer. But that -- but that's -- but consider that foundational testimony.

So we then said, "Well, we'd like to have, you know, that information."

And they said, "Well, we've provided it."

But you can't -- when you look at what has been provided in the TIFF form out of SharePoint, you can't associate -- this is the groupings issue, you can't associate which of those documents belong in the JDE library. That is actually important to know what documents he was referring to as a category, even if he couldn't remember the individual ones, which ones were kept generically, without a specific customer reference, in the JDE software library.

And that's the information -- so that -- that's an example where the information we would say has been produced in a form, in a fashion. But we can't match it up with the witness' testimony, and we can't make a case or put our evidence together as to which of those documents have been kept in this library that the witness had testified about and which even he said he would have to go into SharePoint to identify.

So there's two categories. One is the

information that reveals the groupings and the linkings. The other is information that we don't think has been produced at all and they haven't said they have gone through comprehensively and searched for all of that responsive and relevant information.

THE COURT: All right. Thank you, Mr. Howard.

Mr. Reckers, let's go to counsel's point. Have you comprehensively searched the SharePoint database for all relevant and responsive documents?

MR. RECKERS: Yes, Your Honor. We believe we have.

THE COURT: All right. And so now talk about the -- they have a whole mass of information here.

MR. RECKERS: Yes.

THE COURT: You've given them a huge amount of material. They can't link -- they can't tell what Mr. So and So is talking about without having access to this data that -- you know, you open the file and then you can see what's in the JDE library.

MR. RECKERS: Absolutely. And this is the exact type of discussions that come up in every case, what was he talking about in his deposition? Can you confirm what you produced and where it is?

And we'd be happy to, when there are issues like that, to tell them. What we've gotten is requests for

direct access, no list of deposition --

THE COURT: That's what I understood your position is, if you have a specific issue like this, where is the -- what was the content of the JDE --

MR. RECKERS: Yes.

THE COURT: -- library that Mr. So and So testified about at his deposition, you're willing to provide that information. What you don't want them doing, tip-toeing through your entire internal Internet --

MR. RECKERS: Yes.

THE COURT: -- program?

MR. RECKERS: Yes, Your Honor. I would contend that this is no different than any other dispute. We -- or any other discovery, course of discovery, where there's documents that are referenced, there's a large set of produced documents, produced in a way that - in this case TIFF images, that are a bit different than how they're actually accessed on the computer. We have to work together. But it's not a typical case where direct access to the whole database.

What we've done is we have searched -- we -- even initially, when we did our collections went through SharePoint and identified the relevant groups, the groups that work for Oracle products, including the JDE group, and pulled down the documents that were stored on SharePoint by

those groups.

THE COURT: And refresh my recollection. Didn't we, at the very beginning of the case management in the case, talk about identifying up to 60 custodians who would have relevant and discoverable information in this matter?

MR. RECKERS: Yes, Your Honor.

THE COURT: And you searched for those custodians as well as by subject matter?

MR. RECKERS: Yes. The custodian -- so there's two types of collection. There's the custodial collections, which were typically e-mails, but also things from their local hard drives --

THE COURT: But you -- your collection of -- under both methods included the SharePoint?

MR. RECKERS: Well, the SharePoint's noncustodial. So it was collected from, but as a noncustodial source. It is shared by -- so the JDE group, for example, has their own page on SharePoint, and there are documents that the SharePoint group can share -- or that the JDE group can share -- a SharePoint, by the way -- and you mentioned -- saw this in the papers is just a --

THE COURT: You're linked to Microsoft, yes.

MR. RECKERS: It's a Microsoft product. So it's not something that's unique or that Rimini has some special version of. It's just a way for employees to post

documents that other people they work with might have interest in. We've pulled the documents off the site, because, as counsel says, they are -- there's no dispute. These are relevant documents that are used in the course of Rimini performing services at issue here.

THE COURT: All right.

Mr. Howard, that falls in the nice-try-but-no-cigar. I'm going to deny that request for essentially all rights to look at their database and require you, on an individual basis, to request the type of information and the level of detail that you have requested to fill in the gaps rather than have complete access to the database.

On Oracle's motion to compel two-day deposition of Mr. Ravin. Mr. Howard, I'll hear from you on that one.

MR. HOWARD: Thank you, Your Honor. We have not asked for this relief for any other witness in this case. We're only asking for it because of Mr. Ravin's central importance. I know Your Honor has read the papers. I think we've laid out the reasons there.

There's an enormous number of documents. He's been involved in the daily operations of the company from the day he conceived it, right up to the current day.

He's a prolific e-mail writer. There's an enormous amount of material to cover and -- essentially

touching on every issue in the case, ours and theirs, on the defenses and on his status as a personal defendant.

I don't want to spend more than one day with him, but it's just required by the law and the material and the centrality of him as a witness in the case.

THE COURT: And Mr. Allen?

MR. ALLEN: Good morning, Your Honor.

Mr. Reckers asked me to help with this one issue. It's simply rather straightforward. Federal Rule of Civil Procedure 30(d) is pretty clear, you get seven hours; one day.

And that's particularly important for matters of corporate officers. And this is a case, as Your Honor is well aware, extraordinarily large plaintiff against a very small defendant. It's 170-some employees.

These officers, and particularly the CEO, are very critical to the operations day-to-day. And the idea of trying to distract that CEO for two days, when the rule is pretty clear, give us your fair -- you have a chance for a fair examination, give us your details and show good cause why you need more.

And so far we just don't have that. We have -- what we do know is that this CEO has been deposed twice already by this plaintiff, that they know the background information of this --

THE COURT: And once --

MR. ALLEN: -- CEO --

THE COURT: -- contempt because he refused to answer questions and had to go to court and get an order compelling him to do that.

MR. ALLEN: So he's well aware of how to get to the point.

And the point really for this deposition is that the defendants will be completely reasonable. We think you can do it in one day. We think you should do it in one day. And if you legitimately can do it in one day and we can be shown good cause of what couldn't get asked because we truly were so busy with all these other things that had to be asked, we'll certainly defer and talk about that if it's necessary.

But the idea of coming in and just saying give me two days because I want to talk about whatever I want to talk about, it's just not appropriate for a CEO of a corporation, and it's not contemplated by the rules, there isn't good cause that's been shown other than we have a lot to talk about.

Well, show us an outline. Show us what you're not going to get to, and we'll figure out a way. And that's all we've --

THE COURT: I'd love to --

MR. ALLEN: -- we've said.

THE COURT: -- have my adversary's outline of the proposed deposition --

MR. ALLEN: Right. Well, not necessarily an outline, but at least the things -- the topics and why specifically you don't think you can fit it in two days.

And, of course, if they can't fit it in two days, at the end of the day we'll know they did in good faith, they asked their questions, they got as fast as they could, and they need some more time, we're going to be amenable to doing that for some limited amount of time and once they tell us what else didn't get asked.

But to just say I need two days because I really want to talk to this guy and keep him out of this company for two days, that's just not proper.

THE COURT: All right. The rules were enacted and limitations imposed to try to cut some of the enormous cost of discovery. And I would agree with you, Mr. Allen, if this was a rear-end automobile case or a run-of-the-mill limited scope witness that the limitation of Rule 30 should apply.

But with respect to this gentleman, who is a pivotal person, both with percipient knowledge and knowledge binding the corporation, I'm going to allow them to -- and grant their request for up to two days, subject,

of course, if you believe that the examination is being conducted in a manner that unreasonably annoys, harasses, et cetera, or is duplicative and so forth, you have your remedies under Rule 30(d) as well.

But those should be exercised carefully because the losing party will pay a price on a motion to terminate or limit a deposition.

So I understand, Mr. Allen, that your executive doesn't want to be subjected up to two days. But if they're really just pronging things and asking questions over and over again, you have remedies under the rule. But he's significant enough that two days is not unreasonable for this case.

MR. ALLEN: Okay. Thank you, Your Honor.

THE COURT: Okay. And we have the request for clarification concerning pretrial depositions.

Mr. Reckers.

MR. RECKERS: Thank you, Your Honor. The issue here really is one of unfair surprise. Oracle's a huge corporation. They have --

THE COURT: Sure. And they listed about a hundred people in their initial disclosures. And so you both came to me, and from day one you have been arguing passionately on behalf of your client, don't let them do all the discovery they want to do because it will bury my

client and will destroy us, just by being sued.

And so I listened very carefully to you, and I resolved the disputes between both sides about how many depositions would be allowed unless, for good cause shown, more were needed.

And now you've taken eight depositions. You've noticed two more, or suggested two more. And I'll give you the clarification you're looking for. But it's probably not the answer you want; and that is I side with Oracle on this one, that the -- that provision in my September 21st, 2010, order was intended to tell you if there is genuinely a surprise that someone has sandbagged you and you see a new name on -- in the pretrial order that you couldn't reasonably anticipate having conducted thorough discovery in your case within the parameters the Court allowed, you're going to have an opportunity to take that.

But you're not going to have an opportunity to take depositions in the case at -- you conclude discovery, you get rulings on dispositive motions, you file a joint pretrial order, and now you really take depositions in the case.

That's not going to happen. You're going to be required to show good cause that you could not have anticipated that this was a trial witness or that -- and that was the whole reason. I gave you 20 limitation that

both sides were jockeying about how many depositions could be taken in this case.

I gave you the limitations, not all that you wanted, but I limited the discovery they could do, buying your argument they shouldn't be able to bury your client. But that doesn't relieve you of the obligation to do the discovery during the original discovery cutoff.

And then if you convince me that there is a surprise and you couldn't have known that this was a witness, or you didn't reasonably think this was a witness, or somebody dies and somebody is substituted, or somebody becomes ill and somebody is substituted, those are the kind of things that what I intended and envisioned in the September 21st order about the -- if you need a pretrial deposition you're going to get one. But not -- not the way you're interpreting it.

So I hope I have given you sufficient clarification of what I intended and what I am likely to allow.

MR. RECKERS: Thank you, Your Honor.

THE COURT: Okay. I know you don't like that answer, but I'll try to be as clear as I can about what I meant.

So we have now an emergency motion for protective order. How much of an emergency is this really?

This issue came up on an October 20th deposition. Is it imminently going to rear its head in upcoming imminent discovery?

MR. RECKERS: Yeah, we believe it will. And I think the issue came into clarity of deposition transcript on the 3rd, just last Thursday.

And there's another deposition this coming Thursday, in two days, that we don't know whether or not Oracle's going to try to get in the same amount of questioning. But by that time, by next Thursday, we think at least there's a potential for it.

And then going forward over the next three or four weeks, I believe there's a total of another 10 to 12 depositions that are scheduled -- at least by the end of the month I believe there's another 10 depositions scheduled that could -- appears to be implicated by this particular issue, this particular line of questions that we find highly objectionable.

THE COURT: All right. So opposing counsel, how long do you need to respond to the brief? And is there perhaps a way to deal with the upcoming deposition on Thursday? Is that an issue that you intend to pursue with the witness to be deposed on Thursday?

MR. HOWARD: I -- the answer is I don't know, Your Honor. I'm not handling that deposition.

There were a -- dozens of clients who received a communication which -- from Rimini Street, which is highly confidential. So I'm not going to disclose the content of it. But the line of questioning is directly responsive to that communication that they received from Rimini Street. That's only one basis on which we'll oppose the motion.

I'd like to get this resolved quickly. I think it's in everybody's interest. I think responding by tomorrow is a tall order. And having Your Honor rule before the deposition, which is on the East Coast on Thursday, is an even taller order.

THE COURT: I can't -- I can't do it anyway, so what's a reasonable briefing --

MR. HOWARD: But we could respond by Thursday.

THE COURT: All right. I'll have -- then give you until Thursday to respond.

Mr. Reckers, do you want a reply brief, or do you just want to orally argue it?

MR. RECKERS: I think there's no need for a reply brief.

THE COURT: All right. So, Mr. Miller, do we have some time next Tuesday?

And then if the issue comes up during the deposition, obviously you try to work it out, if you can. You're welcome to try to get me in a dispute resolution

conference. But I can't promise that I'm going to be available.

So -- but if you need an immediate resolution on -- of an issue during a deposition, try to contact chambers. And if I'm available, I'll try to give you a dispute resolution conference.

Or if you want to make sure that you have a more comprehensive ruling that's not so much on the fly, I suspect you can reach an accomodation about how to get as much progress as you can on that witness testimony without this issue, and, depending on the outcome of my ruling, reserve your right to either ask questions or not.

MR. HOWARD: It's a customer. So I think we'd both prefer not to inconvenience the customer for a second day of deposition. But we'll see if we can work out some accomodation in the meantime.

THE COURT: Okay. All right. So I'll do the best I can. But I can't give you a time on Thursday anyway.

And so, Mr. Miller, do we have some time next Tuesday?

COURTROOM ADMINISTRATOR: Your Honor, the Court's schedule in the morning of Tuesday, the 15th, at this time is scheduled all the way through to 11:30.

But we do have the 1:30 p.m. slot available on

Tuesday, the 15th, if that's convenient for all parties.

THE COURT: Counsel?

MR. HOWARD: That's fine with us, Your Honor.

THE COURT: Mr. Reckers?

MR. RECKERS: Yes.

MR. HOWARD: I think we would likely appear telephonically, if that's okay with your Honor.

THE COURT: That's fine. Either side could appear telephonically, or both sides can appear telephonically, if that's more convenient for you.

All right. Mr. Miller, why don't we give them the 1:30 slot. And I'll read your papers and be prepared to give you a ruling from the bench.

MR. HOWARD: Thank you, Your Honor.

COURTROOM ADMINISTRATOR: Yes, Your Honor. And that is Tuesday, the 15th, and 1:30 p.m. And I'll include that in the minute order, to get everybody connected telephonically.

MR. HOWARD: Thank you.

We did have the issue, Your Honor, I don't know if you intended to take it up, as to when the next CMC would occur and whether there would be one or two between now and the end of the discovery period and the time for filing motions.

THE COURT: Why don't we take that up on next

Tuesday, and I can give you some more time then. I'm holding some other people up who are waiting to be heard.

MR. HOWARD: Very well, Your Honor.

THE COURT: So both sides remind me, in case I forget and -- about your respective proposals, and we'll give you some dates.

Okay. If I recall correctly, we have an April of next year discovery cutoff?

MR. HOWARD: No. It's December 5th of this year.

THE COURT: Didn't -- wasn't -- weren't the dates suggested after the district judge gave an extension of the discovery plan and scheduling order deadlines? I thought there was an order that was entered -- maybe I --

MR. HOWARD: There is expert discovery that --

MR. RECKERS: Yeah, maybe expert discovery.

MR. HOWARD: Yeah, percipient discovery is -- I think the parties are in agreement, would end December 5th. Expert discovery, I think, may be the date you've recited.

THE COURT: Okay. Maybe that's what I'm looking at then. Because I saw -- you requested an adjustment of the deadlines back in August --

MR. HOWARD: Yes.

THE COURT: -- and I did adjust the deadlines. But it's only for experts; correct?

Okay. All right. Now we're on the same page.

MR. HOWARD: I think the December 5th deadline was part of that package. But it's a fact discovery cutoff. And then we'll go into April on the expert.

THE COURT: All right. We'll hear back from you on Tuesday at 1:30 and go from there.

MR. HOWARD: Thank you, Your Honor.

THE COURT: Thank you, counsel.

(The proceedings concluded at 9:36 a.m.)

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I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Donna Davidson 11/22/16

Donna Davidson Date